

DEPARTMENT OF WORKFORCE DEVELOPMENT  
DIVISION OF ECONOMIC SUPPORT  
ADMINISTRATOR'S MEMO SERIES

ACTION 01-01

ISSUE DATE: 01/09/2001  
DISPOSAL DATE: Ongoing

RE: PERCENTAGE  
EXPRESSED ORDERS

To: Child Support Agency Directors  
Child Support Agency Attorneys

From: Jennifer L. Noyes /s/  
Administrator

Background

The Department of Workforce Development is planning to introduce legislation to remove the option of expressing new child support orders as a percentage and hopes for passage early in 2001. That legislative proposal will also permit modification of a percentage expressed order to a fixed sum order without the showing of a substantial change in circumstances required under s. 767.32(1)(b) and (c), Wis. Stats.

In the interim, before this legislation takes effect, child support agencies can take steps to reduce the number of percentage expressed orders in Wisconsin's IV-D caseload. The goal is to reduce the number of percentage expressed orders in IV-D cases to less than 10% of our total IV-D caseload with orders by late 2001.

New Policies

1. Effective immediately, child support agencies and their attorneys may not recommend straight percentage expressed or mixed percentage expressed/fixed sum orders to courts or court commissioners in new or modified child support orders.

Instead, child support agencies must recommend fixed sum orders in all new or modified child support orders.

2. To the extent possible, prior to passage of new legislation, child support agencies must use available opportunities to modify percentage expressed or mixed orders to fixed sum orders. By statute, the following situations may constitute a substantial change in circumstances sufficient to justify revision of an order:
- A family with an existing child support order becomes eligible for W-2, including W-2 child care. See s. 767.32(1)(b)1., Wis. Stats.
  - A change in the needs of the child.
  - A change in the payer's earning capacity.
  - The payer does not furnish the required annual financial disclosure forms, including, if required, annual tax returns, as required in the payer's order. s. 767.32(1)(b)3., Wis. Stats.
  - A finding by the child support agency that the existing order did not follow the Percentage of Income Standard at the time it was issued, but the court did not state in writing or on the record the reasons for the deviation. s. 767.32(1)(b)4., Wis. Stats.
  - Any other factor that the court determines is relevant. (Child support agencies should explore with their courts and court commissioners circumstances that might justify a motion to modify a straight or mixed percentage expressed order to a fixed sum order, including failure to pay the appropriate amount under the existing order or failure to maintain or obtain employment.)

In addition, child support agencies should review cases with straight or mixed percentage expressed orders which are brought into court for enforcement actions to determine whether a change of circumstances exists sufficient to justify a motion to modify the underlying order (for example, Children First and contempt actions).

When the child support agency initiates the action to review and modify the order, the child support agency should follow the steps in *Section III C, CSA Determines Need for Review*, in the Review and Adjustment Fact Sheet.

To reduce the burden on the courts, CSAs may wish to encourage the parties to stipulate to fixed sum orders in these cases. A CSA may not require a custodial parent to sign a stipulation as a condition of cooperation. However, the parent may be required to attend an appointment with CSA staff about modification of the order and a potential stipulation. If the parent's attendance at a court hearing is required for the court to modify the order, the parent may be required to attend the court hearing as a condition of cooperation.

A custodial parent in a non-assistance case with no state-owed arrears has the option of declining IV-D services if the parent prefers to retain a percentage-expressed order. The CSA should discuss with the CP the implications of the loss of IV-D services. The appropriate closure reason in these cases is "CDIS," and the case must be reopened as an NIVD case.

3. When the State is a real party in interest, the local child support agencies should not approve or sign a stipulation for child support if the support is expressed as a percentage of income rather than a fixed amount.

#### Policy Clarification

4. Child support agencies have no responsibility to reconcile percentage expressed orders for NIV-D cases.

#### Additional Information

The goal is to pass legislation concerning percentage-expressed orders early in 2001. After the legislation passes, the Division of Economic Support will issue new policy guidance to child support agencies based on the new statutes. In the interim, the Bureau of Child Support will prepare talking points which agency staff may use with parents to explain the advantages of fixed sum orders. A state/local CSA workgroup is developing a workplan of actions needed to assist child support agencies in this significant undertaking.

ACTION SUMMARY STATEMENT:	Child support agencies and their attorneys must recommend only fixed sum orders when bringing actions and stipulations to court for establishment or modification of child support orders. Child support agencies and their attorneys should use available opportunities under existing statutes to modify existing percentage expressed and mixed orders in the IV-D caseload to fixed sum orders.
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REGIONAL OFFICE CONTACT: Assistant Area Administrators

cc: County Department of Human Services Directors  
County Department of Social Services Directors  
County Economic Support Managers  
Tribal Economic Support Directors  
W-2 Agency Directors